

THURSDAY
P.M.

2010

January 11, 2010

Magistrate Judge A. Kathleen Tomlinson
United States District Court
100 Federal Plaza Courtroom 910
Central Islip, NY 11722-9014

Re: Capone v. Goldman 09 CIV 1208 (SJF)

Dear Magistrate Judge Tomlinson:

I apologize for taking the Court's time but feel compelled to respond to Mr. Koak's latest tirade. As Mr. Koak well knows, extortion requires a demand, a quid pro quo. I didn't demand anything from Mr. Capone. I merely advised that, as of the mailing, I had not yet filed the Referral form with the IRS. I did, in fact file the form with the IRS a few days later.

The referral does not state anything different from what I've expressed from Day 1. The form states the

truth contrary to the fictionalized account set forth even more dramatically by Mr. Cook's Second Amended Complaint. I know full well that false statements to the IRS constitute perjury. I have enough problems, why risk more? The advances by Mr. Capone were and always have been loans to Golden; not loans to me individually and not "investments". The loans were disguised as sham 1031 transaction to avoid capital gains tax.

I would also take this opportunity to advise this Court that I received Mr. Cook's proposed stipulation regarding the Second Amended Complaint. In accordance with his letter, I've signed it and expect to mail it back to him today.

The Court's Order of December 31, 2009 does not appear to address my request, submitted as part of my initial

correspondence seeking authorization to file and serve a Third Party Summons and Complaint upon Mr. Ken Fox. I respectfully request a decision on that application.

I also request that this Court direct that the moving party forward a copy of all transcripts of all depositions held in this case. I have also not received, contrary to Mr. Cook's assertion of copies of the exhibits proffered at my earlier deposition.

Without question, Mr. Capone is a victim and I do not deny him the right to seek to recover some of the millions lost. However, when will someone recognize that his abuse of this court to prosecute spurious claims is making him more of a victim and denying recovery to the other victims. The only source of recompense will have to come from

the Bankruptcy Court where both all my remaining assets
and the assets of Goldman, LLC reside. When will Mr. Kook
and Mr. Capone realize that all he will obtain, after the
expenditure of thousands of dollars in legal fees, is a
piece of paper?

Thank you

Respectfully,

Mark Goldman